

TITLE V—CONSTRUCTION- DIFFERENTIAL SUBSIDY¹²

SEC. 501. SUBSIDY AUTHORIZED FOR VESSELS TO BE OPERATED IN FOREIGN TRADE (46 App. U.S.C. 1151 (2002)).

(a) **Application for Subsidy for Construction; Conditions Precedent to Granting.** Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of high transport capability and productivity.

(b) **Submission of Plans to Navy Department; Certification of Approval.** The Secretary of Transportation shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

¹² Throughout Title V, (a) the statutory life of vessels is generally provided as 25 years. But see footnote 8, page 22, *supra*. (b) The term "citizen of the United States" is defined as provided in footnote 1, page 1 *supra*.

(c) Application for Subsidy for Reconstruction or Reconditioning; Conditions Precedent to Granting; Contracts. Any citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction- differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary of Transportation, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act, the Secretary of Transportation may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this title and under such further conditions and limitations as may be prescribed in the rules and regulations the Secretary of Transportation has adopted as provided in section 204(b) of this Act; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary of Transportation that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this Act.

SEC. 502. CONSTRUCTION OF VESSELS; BIDS; SUBSIDIES (46 App. U.S.C. 1152 (2002)).

(a) Approval of Bids; Contract with Bidder; Acceptance of Negotiated Price; Shipyard Records, Availability; Contract with Applicant or Qualified Citizen for Purchase of Vessel. If the Secretary of the Navy certifies his approval under section 501(b) of this Act, and the Secretary of Transportation approves the application, he may secure bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Transportation to be fair and reasonable, the Secretary of Transportation may approve such bid, and if such approved bid is accepted by the proposed ship purchaser, the Secretary of Transportation is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Secretary of Transportation to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund heretofore referred to, or out of other available funds. Notwithstanding the provisions of the first sentence of section 505 of this Act with respect to competitive bidding, the Secretary of Transportation is authorized to accept a price for the construction of the ship which has been negotiated between a shipyard and a proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence

that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel, at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this Act, of building such vessel in a foreign shipyard.

(b) Basis for Fixing Subsidy; Cost of Construction in Foreign Yards; Annual Recomputation and Publication of Foreign Cost; Limitation on Construction Differential; Report on American Shipbuilding Industry. The amount of the reduction in selling price which is herein termed "construction differential subsidy" shall equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Secretary, of the construction of the type vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The Secretary of Transportation shall recompute such estimated foreign cost annually unless, in the opinion of the Secretary, there has been a significant change in shipbuilding market conditions. The Secretary shall publish notice of his intention to compute or recompute such estimated foreign cost and shall give interested persons, including but not limited to shipyards and shipowners and associations thereof, an opportunity to file written statements. The Secretary's consideration shall include, but not be limited to, all relevant matter so filed, and his determination shall include or be accompanied by a concise explanation of the basis of his determination. The construction differential approved and paid by the Secretary shall not exceed 50 per centum of the cost of constructing,

reconstructing, or reconditioning the vessel (excluding the cost of national defense features). If the Secretary finds that the construction differential exceeds, in any case, the foregoing percentage of such cost, the Secretary may negotiate with any bidder (whether or not such person is the lowest bidder) and may contract with such bidder (notwithstanding the first sentence of section 505) for the construction, reconstruction, or reconditioning of the vessel involved in a domestic shipyard at a cost which will reduce the construction differential to such percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and Clerk of the House, respectively.

(c) **Terms of Sale of Vessel to Purchaser.** In such contract of sale between the purchaser and the Secretary of Transportation, the purchaser shall be required to make cash payments to the Secretary of Transportation of not less than 25 per centum of the price at which the vessel is sold to the purchaser. The cash payments shall be made at the time and in the same proportion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary of Transportation. The purchaser shall pay, not less frequently than annually, interest on those portions of the Secretary of Transportation's payments as made to the shipbuilder which are chargeable to the purchaser's portion of the price of the vessel (after deduction of the purchaser's cash payments) at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. The balance of such purchase price shall be paid by the purchaser, within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary of Transportation to the purchaser. Interest at the rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel shall be paid on all such installments of the purchase price remaining unpaid.

(c) **Construction in Navy Yards; Sales to Citizens; Terms.** If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Secretary of Transportation that the bids received from privately owned shipyards of the United States are collu-

sive, excessive, or unreasonable, and if a citizen of the United States agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Secretary of Transportation may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Secretary of Transportation. In such event the Secretary of Transportation is authorized to pay for any such vessel so constructed from his construction fund. The Secretary of Transportation is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to a citizen of the United States for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b), such sale to be in accordance with all the provisions of this title.

(f) Survey of Shipbuilding Capability; Correction of Inadequacies; Reimbursement of Certain Vessel Construction and Delivery Expenses. The Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this Act, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Transportation, in connection with ship construction, reconstruction, reconditioning, or remodeling under titles V and VII, upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as here-in provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance with the provisions of this Act, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsec-

tion shall be subject to all of the terms and conditions of this Act, excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

If, as a result of allocation under this subsection, the purchaser incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary of Transportation (with respect to construction under title V, except section 509) shall reimburse the purchaser for such excess, less one-half of any gross income the purchaser receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the construction-differential subsidy: Provided, That no interest shall be paid on any refund authorized under this Act. If the vessel is constructed under section 509 the Secretary of Transportation shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the purchaser receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port in an essential service. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential

subsidy.

(g) **Sale of Vessels Acquired by Secretary.** Upon the application of any citizen of the United States to purchase any vessel acquired by the Secretary of Transportation under the provisions of section 215, the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation, less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b), such sale to be in accordance with all the provisions of this title. Such vessel shall thereupon be eligible for an operating-differential subsidy under title VI of this Act, notwithstanding the provisions of section 601(a)(1), and section 610(1), or any other provision of law.

(h) **Installation or Removal of National Defense Features; Title to Such Features.** The Secretary of Transportation is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Transportation is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 11(a) of the Merchant Ship Sales Act of 1946, (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936, (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under title XI of this Act, or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Transportation to install or remove such national defense features. Title to such national defense features which the Secretary of Transportation determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this title V.

(i) **Plans, Specifications, and Proposals for National Defense Features; Certification of Approval.** The Secretary of Transportation shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

SEC. 503. DOCUMENTATION OF COMPLETED VESSEL UNDER LAWS OF UNITED STATES; DELIVERY TO PURCHASER, FIRST MORTGAGE TO SECURE DEFERRED PAYMENT (46 App. U.S.C. 1153 (2002)).

Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this title and its delivery by the shipbuilder to the Secretary of Transportation, the vessel shall be documented under the laws of the United States and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the purchaser with warranty against liens, pursuant to the contract of sale between the purchaser and the Secretary of Transportation. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, or so long as there remains due the United States any principal or interest on account of the purchase price, whichever is the longer period. At the time of delivery of the vessel the purchaser shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the purchaser in respect to said vessel: Provided, That, notwithstanding any other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under section 4(b) of the Merchant Ship Sales Act of 1946, reconverted or restored for normal operation in commercial services, or in respect to a passenger vessel purchased under title V of this Act, which is delivered subsequent to March 8, 1946, and which (i) is of not less than ten thousand gross tons, (ii) has a designed speed approved by the Secretary of Transportation but not less than eighteen knots, (iii) has accommodations for not less than two hundred passengers, and, (iv) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Transportation, be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary of Transportation such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the purchaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 9 of the Merchant Marine Act, 1920.

SEC. 504. PURCHASE OF VESSEL CONSTRUCTED IN ACCORDANCE WITH APPLICATION FOR SUBSIDY; BID OR NEGOTIATED PRICE BASIS FOR SUBSIDY AND PAYMENTS FOR COST OF NATIONAL DEFENSE FEATURES; DOCUMENTATION (46 App. U.S.C. 1154 (2002)).

If a qualified purchaser under the terms of this title desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this title, the Secretary of Transportation may, in lieu of contracting to pay the entire cost of the vessel under section 502, contract to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. The construction-differential subsidy and payments for the cost of national defense features shall be based upon the lowest responsible domestic bid unless the vessel is constructed at a negotiated price as provided by section 502(a) or under a contract negotiated by the Secretary of Transportation as provided in section 502(b) in which event the construction-differential subsidy and payments for the cost of national defense features shall be based upon such negotiated price. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this title to protect the interests of the United States as the Secretary of Transportation deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 503 of this title. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.

505. ELIGIBLE SHIPYARDS; MATERIALS; CONDITIONS OF CONTRACTS; LIMITATION TO AMERICAN SHIPYARDS; AMERICAN MATERIALS, WAIVER; ABILITY OF BIDDERS; FILING BIDS AND DATA (46 APP. U.S.C. 1155 (2002)).

All construction in respect of which a construction-differential subsidy is allowed under this title shall be performed in a shipyard of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the Secretary of Transportation to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K of section 401 of the Tariff Act of 1930; Provided, however, That with respect to other than major components of the hull, superstructure, and any material used in the construction thereof, (1) if the Secretary of Transportation determines that the requirements of this sentence will unreasonably delay completion of any vessel beyond its contract delivery date, and (2) if such determination includes or is accompanied by a concise expla-

nation of the basis therefor, then the Secretary of Transportation may waive such requirements to the extent necessary to prevent such delay. No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Secretary of Transportation shall be accompanied by all detailed estimates upon which it is based. The Secretary of Transportation may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept on file until disposed of as provided by law. For the purposes of this Title V, the term "shipyard of the United States" means shipyards within any of the United States and the Commonwealth of Puerto Rico.

SEC. 506.¹³ OPERATION OF SUBSIDY CONSTRUCTED VESSEL LIMITED TO FOREIGN TRADE; REPAYMENTS TO SECRETARY FOR DEVIATIONS (46 App. U.S.C. 1156 (2002)). Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages com-

¹³ Section 505 of Public Law 100-71, approved July 11, 1987 (101 STAT. 391, 471), the Supplemental Appropriations Act, 1987, imposes restrictions as follows: "SEC. 505. None of the funds appropriated or made available by this or any other Act or otherwise appropriated or made available to the Secretary of Transportation or the Maritime Administrator for purposes of administering the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et. seq.), shall be used by the United States Department of Transportation or the United States Maritime Administration to propose, promulgate, or implement any rule or regulation, or, with regard to vessels which repaid subsidy pursuant to the rule promulgated by the Secretary May 3, 1985 and vacated by Order of the U.S. Court of Appeals for the D.C. Circuit January 16, 1987, conduct any adjudication or other regulatory proceeding, execute or perform any contract, or participate in any judicial action with respect to the repayment of construction differential subsidy for the permanent release of vessels from the restrictions in section 506 of the Merchant Marine Act, 1936, as amended: Provided, That such funds may be used to the extent such expenditure relates to a rule which conforms to statutory standards hereafter enacted by Congress."

pleted during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

SEC. 507. CONSTRUCTION OF NEW VESSEL TO REPLACE OBSOLETE; PURCHASE OF OLD VESSEL BY SECRETARY; BOND OF SELLER AGAINST LIENS (46

App. U.S.C. 1157 (2002)). If a contract is made by the Secretary of Transportation under authority of this title for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary of Transportation should be replaced because it is obsolete or inadequate for successful operation in such trade, the Secretary of Transportation is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning and less a reasonable and proper depreciation, based upon not more than a twenty-five-year life of the vessel, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: Provided, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: And provided further, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

SEC. 508.¹⁴ DISPOSITION OF VESSELS TRANSFERRED TO MARITIME ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION (46 App. U.S.C. 1158 (2002)). If the Secretary of Transportation shall determine that any vessel transferred to the Maritime Administration of the Department of Transportation by section 202 of this Act, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary of Transportation is authorized (1) to scrap said vessel, or (2)

¹⁴ Note the various scrapping provisions set forth under VESSEL SCRAPPING, commencing at page 307, *infra*.

to sell such vessel for cash, after appraisal¹⁵ and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: Provided, That the purchaser thereof shall enter into an undertaking with sureties approved by the Secretary of Transportation that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

SEC. 509. VESSELS TO BE OPERATED IN DOMESTIC TRADE, TERMS AND CONDITIONS OF CONSTRUCTION AID AND SALE TO PURCHASER (46 App. U.S.C. 1159 (2002)).

Any citizen of the United States may make application to the Secretary of Transportation for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Transportation, the vessel may be constructed under the terms and conditions of this title, but no construction-differential subsidy shall be allowed. The Secretary of Transportation shall pay for the cost of national-defense features incorporated in such vessels. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, or in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Transportation not less than 12 1/2 per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Transportation not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-five equal annual installments, with interest at a rate not

¹⁵ Section 1 of the Act of June 29, 1949 (63 STAT. 349), as amended (46 App. U.S.C. 864b) provides: "On or after June 29, 1949, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price."

less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Transportation may determine: Provided, That, notwithstanding any other provision of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 503 of this Act, may, with the approval of the Secretary of Transportation, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.

SEC. 510. ACQUISITION OF OBSOLETE VESSELS
(46 App. U.S.C. 1160 (2002)).

(a) **Definitions.** When used in this section—

(1) The term “obsolete vessel” means a vessel or vessels, each of which (A) is of not less than one thousand three hundred and fifty gross tons, (B) in the judgment of the Secretary of Transportation, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest and (C) has been owned by a citizen or citizens of the United States for at least three years immediately prior to the date of acquisition hereunder.

(2) The term “new vessel” means a vessel or vessels, each of which (A) is constructed under the provisions of this Act, and is acquired within two years from the date of completion of such vessel, or is purchased under section 714, as amended, by the person turning in an obsolete vessel under this section, or (B) is hereafter constructed in a domestic shipyard on private account and not under the provisions of this Act, and documented under the laws of the United States.

(b) **Promotion of Construction of New Vessels; Allowance on Obsolete Vessels.** In order to promote the construction of new, safe, and efficient vessels to carry the domestic and foreign water-borne commerce of the United States, the Secretary of Transportation is authorized, subject to the provisions of this section, to acquire any obsolete vessel in exchange for an allowance of credit. The obsolete vessel shall be acquired by the Secretary of Transportation, if the owner so requests, either at the time the owner contracts for the construction or purchase of a new vessel or within five days of the actual date of delivery of the new vessel to the owner. The amount of the allowance shall be determined at the time of the acquisition of the obsolete vessel by the Secretary of Transportation. In the event the obsolete vessel is acquired

by the Secretary of Transportation at the time the owner contracts for the construction or purchase of the new vessel, the allowance shall not be paid to the owner of the obsolete vessel, but shall be applied upon the purchase price of a new vessel. In the case of a new vessel constructed under the provisions of this Act, such allowance may, under such terms and conditions as the Secretary of Transportation may prescribe, be applied upon the cash payments required under this Act. In case the new vessel is not constructed under the provisions of this Act, the allowance shall, upon acquisition of the obsolete vessel by the Secretary of Transportation be paid, for the account of the owner, to the shipbuilder constructing such new vessel. In the event that title to the obsolete vessel is acquired by the Secretary of Transportation at the time of delivery of the new vessel, the allowance shall be deposited in the owner's capital construction fund. This subsection shall apply to obsolete vessels exchanged for new vessels hereafter contracted to be built, or eligible for such exchange but not exchanged in connection with a contract for new vessels executed prior to October 1, 1960.

(c) **Utility Value of New Vessel; Gross Tonnage.** The utility value of the new vessel for operation in the domestic or foreign commerce of the United States shall not be substantially less than that of the obsolete vessel. The gross tonnage of the obsolete vessel may exceed the gross tonnage of the new vessel in a ratio not in excess of three to one, if the Secretary of Transportation finds that the new vessel, although of lesser tonnage, will provide utility value equivalent to or greater than that of the obsolete vessel.

(d) **Amount of Allowance on Obsolete Vessel; Determination of Amount.** The allowance for an obsolete vessel shall be the fair and reasonable value of such vessel as determined by the Secretary of Transportation. In making such determination the Secretary of Transportation shall consider: (1) the scrap value of the obsolete vessel both in American and foreign markets, (2) the depreciated value based on a twenty or twenty-five year life, whichever is applicable to the obsolete vessel, and (3) the market value thereof for operation in the world trade or in the foreign or domestic trade of the United States. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction of the new vessel, and the owner uses such vessel during the period of construction of the new vessel, the allowance shall be reduced by an amount representing the fair value of such use. The rate for the use of the obsolete vessel shall be fixed by the Secretary of Transportation for the entire period of such use at the time of execution of the contract for the construction of the new vessel.

(e) **Recognition of Gain for Income Tax Purposes; Basis for Gain or Loss.** No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to

the Secretary of Transportation under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer.

(f) **Report to Congress.** The Secretary of Transportation shall include in his annual report to Congress a detailed statement of all transactions consummated under the provisions of the preceding subsections during the period covered by such report.

(g) **Use of Vessels 25 Years Old or More.** An obsolete vessel acquired by the Secretary of Transportation under this section which is or becomes twenty-five years old or more, and vessels presently in the Secretary's laid-up fleet which are or become twenty-five years old or more, shall in no case be used for commercial operation, except that any such obsolete vessel, or any such vessel in the laid-up fleet may be used during any period in which vessels may be requisitioned under section 902 of this Act, as amended, and except as otherwise provided in this Act for the employment of the Secretary's vessels in steamship lines on trade routes exclusively serving the foreign trade of the United States.

(i)¹⁶ **Exchange of Vessels; Valuation; Scrapping of Traded-Out Vessels.** The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, United States Code, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 9 and 37 of the Shipping Act, 1916, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.

(j) **Placement in National Defense Reserve Fleet of Acquired Vessels.** Any vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Maritime Administration of the Department

¹⁶ Note the various scrapping provisions set forth under VESSEL SCRAPPING, commencing at page 307, *infra*.

of Transportation under any other authority shall be placed in the national defense reserve fleet established under authority of section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and shall not be traded out or sold from such reserve fleet, except as provided for in subsections (g) and (i) of this section. This limitation shall not affect the rights of the Secretary of Transportation to dispose of a vessel as provided in other sections of this title or in titles VII or XI of this Act.

SEC. 511. RESERVE FUNDS FOR CONSTRUCTION OR ACQUISITION OF VESSELS, TAXATION (46 App. U.S.C. 1161 (2002)).

(a) **"New Vessel" Defined.** When used in this section the term "new vessel" means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) constructed in the United States after December 31, 1939, or the construction of which has been financed under Titles V or VII of this Act, as amended, or the construction of which has been aided by a mortgage insured under Title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

(b) **Establishment of Construction Reserve Funds.** For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy set forth in title I of this Act, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the pro-

visions of this section and rules or regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

(c) **Recognition of Gain for Taxation Where Proceeds of Sale or Indemnity for Loss Deposited in Fund.** In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to the expiration of sixty days after the receipt of the payment or indemnity, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer.

As used in this subsection the term “net proceeds” and the term “net indemnity” mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

(d) **Basis for Determining Gain or Loss and for Depreciation of New Vessels.** The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g), in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new

vessel which represents gain not recognized for tax purposes under subsection (c).

(e) **Order, Proportions, etc., of Deposits and Withdrawals.** For the purposes of this section, (1) if the net proceeds of a sale or the net indemnity in respect of a loss are deposited in more than one deposit, the amount consisting of the gain shall be considered as first deposited; (2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and (3) if any deposit consists in part of gain not recognized under subsection (c), any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit.

(f) **Amounts in Fund as Accumulation of Earnings or Profits.** With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) of this section have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code (of 1939).

(g) **Benefits of Section Conditioned upon Manner and Time of Expenditure of Deposits.** The provisions of subsections (c) and (f) shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury—

(1) under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation for the reconstruction or reconditioning of a new vessel or vessels, entered into within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date, only if under such rules and regulations—

(A) within such period not less than 12 1/2 per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Secretary of Transportation to the extent

by him deemed necessary; and

(B) in case of a vessel or vessels not constructed under the provisions of this title or not purchased from the Secretary of Transportation, (i) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Secretary of Transportation and certified by him to the Secretary of the Treasury, and (ii) all construction under such contract is completed with reasonable dispatch thereafter;

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date.

(h) **Authorizations of Extensions of Time.** The Secretary of Transportation is authorized under rules and regulations to be prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation to grant extension of the period within which the deposits shall be expended or obligated or within which construction shall have progressed to the extent of 5 per centum of completion as provided herein, but such extension shall not be for an aggregate additional period in excess of two years with respect to the expenditure or obligation of such deposits or more than one year with respect to the progress of such construction: Provided, That until January 1, 1965, in addition to the extensions hereinbefore permitted, further extensions may be granted ending not later than December 31, 1965.

(i) **Taxation of Deposits upon Failure of Conditions.** Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year,

except for the purpose of the declared value excess-profits tax and the capital stock tax. If any such deposited gain or portion thereof with respect to a deposit made in any taxable year ending on or before June 30, 1945 is so included in gross income for such taxable year, there shall (in addition to any other deficiency) be assessed, collected, and paid in the same manner as if it were a deficiency, an amount equal to 1.1 per centum of the amount of gain so included, such amount being in lieu of any adjustment with respect to the declared value excess-profits tax for such taxable year.

(j) **Assessment and Collection of Deficiency Tax.** Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i) of this section, and the amount to be treated as a deficiency under such subsection in lieu of any adjustment with respect to the declared value excess-profits tax, may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time: Provided, however, That interest on any such deficiency or amount to be treated as a deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) to be included in gross income.

(k) **Taxable Years Governed by this Section.** This section shall be applicable to a taxpayer only in respect of sales or indemnifications for losses occurring within a taxable year beginning after December 31, 1939, and only in respect of earnings derived during a taxable year beginning after December 31, 1939.

(l) **Vessels Deemed Constructed or Acquired by Taxpayers Owning Stock in Corporations Constructing or Acquiring Vessels.** For the purposes of this section a vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the total number of shares of each class of stock of the corporation.

(m) **Definitions.** The terms used in this section shall have the same meaning as in chapter 1 of Title 26.

(n) **“Contract for the construction” and “construction contract” defined.** The terms “contract for the construction” and “construction contract”, as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Secretary of Transportation with respect to such construction and containing provisions deemed necessary or advisable by the Secretary of Transportation to carry out the purposes and policy of this section.

(o) **“Reconstruction and reconditioning” defined.** The terms

“reconstruction and reconditioning”, as used in this section, shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary of Transportation determines that the objectives of this Act will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a “new vessel” within the meaning of this section for such reconstruction, reconditioning, or modernization.

SEC. 512.¹⁷ LIMITATION ON RESTRICTIONS (46 App. U.S.C. 1162 (2002)).

Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

¹⁷ Section 512 was added by Section 7 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3133), the Maritime Security Act of 1996.